

Department of the Army, DoD

§ 536.25

claims arising out of the operation of an Army Quartermaster laundry are considered to be incident to service and are payable only if claimant is not a proper claimant under 31 U.S.C. 3721.

(3) Registered or insured mail in the possession of the Army, even though the loss was caused by a criminal act.

(c) *Effect of FTCA.* A claim arising in the United States may be settled under §§ 536.20 through 536.35 only if the FTCA (28 U.S.C. 2671–2680), § 536.50, has been judicially determined not to be applicable to claims of this nature, or if the claim arose incident to noncombat activities.

(d) *Advance payments.* Advance payments under 10 U.S.C. 2736, as amended, in partial payment of meritorious claims to alleviate immediate hardship are authorized.

§ 536.24 Claims not payable.

A claim is not payable under §§ 536.20 through 536.35 which—

(a) Results wholly from the negligent or wrongful act of the claimant or agent.

(b) Is for reimbursement for medical, hospital, or burial expenses furnished at the expense of the United States.

(c) Is purely contractual in nature.

(d) Arises from private as distinguished from Government transactions.

(e) Is based solely on compassionate grounds.

(f) Is for war trophies or articles intended directly or indirectly for persons other than the claimant or members of his or her immediate family, such as articles acquired to be disposed of as gifts or for sale to another, voluntarily bailed to the Army, or is for precious jewels or other articles of extraordinary value voluntarily bailed to the Army. The preceding sentence is not applicable to claims involving registered or insured mail. No allowance will be made for any item when the evidence indicates that the acquisition, possession, or transportation thereof was in violation of DA directives.

(g) Is for rent, damage, or other payments involving the acquisition, use, possession, or disposition of real property or interests therein by and for the DA, except as authorized by § 536.23(b)(1). Real estate claims found-

ed upon contract are generally processed under AR 405-15.

(h) Is not in the best interests of the United States, is contrary to public policy, or is otherwise contrary to the basic intent of the governing statute (10 U.S.C. 2733); for example, claims by inhabitants of unfriendly foreign countries or by or based on injury or death of individuals considered to be unfriendly to the United States. When a claim is considered to be not payable for the reasons stated in this paragraph, it will be forwarded for appropriate action to the Commander, USARCS, together with the recommendations of the responsible claims office.

(i) If presented by a national, or a corporation controlled by a national, or a country at war or engaged in armed conflict with the United States, or of any country allied with such enemy country unless the settlement authority having jurisdiction over the claim determines that the claimant is and, at the time of the incident, was friendly to the United States. A prisoner of war or an interned enemy alien is not excluded as to a claim for damage, loss, or destruction of personal property in the custody of the Government otherwise payable.

(j) Is for personal injury or death of a member of the Armed Forces or Coast Guard or a civilian employee thereof which is incident to his or her service (10 U.S.C. 2733(b)(3)).

(k) The types of claims not payable under the FTCA (see § 536.50(j)) are also not payable under §§ 536.20 through 536.35 with the following exceptions:

(1) The foreign country exclusion in 28 U.S.C. 2680(k) does not apply to claims under §§ 536.20 through 536.35.

(2) The *Feres* bar in § 536.50(j)(1) does not apply to claims under §§ 536.20 through 536.35, but see the exclusion in paragraph (j) of this section.

§ 536.25 Claims also cognizable under other statutes.

(a) *General.* Claims based upon a single act or incident cognizable under §§ 536.20 through 536.35, which are also cognizable under the FTCA (28 U.S.C. 2671–2680) § 536.50, the Army Maritime Claims Settlement Act (10 U.S.C. 4801–04, 4806) § 536.60, the FCA (10 U.S.C.